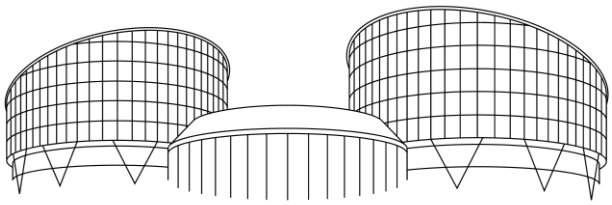

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DI SARNO AND OTHERS v. ITALY

(Application no. 30765/08)

JUDGMENT
[Extracts]

STRASBOURG

10 January 2012

FINAL

10/04/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of di Sarno and Others v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,
Danutė Jočienė,
Dragoljub Popović,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges*,
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 29 November 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30765/08) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eighteen Italian nationals on 9 January 2008.

2. The applicants, a list of whose names is appended to the present judgment, were represented before the Court by one of their number, Mr Errico di Lorenzo, a lawyer practising in Somma Vesuviana (Naples).

3. The Italian Government ("the Government") were represented by their Agent, Ms E. Spatafora, and their former co-Agent, Mr N. Lettieri.

4. The applicants alleged that the poor management by the Italian authorities of the waste collection, treatment and disposal services in the Campania region of Italy, and the lack of diligence of the judicial authorities in prosecuting those responsible, had violated their rights under Articles 2, 6, 8 and 13 of the Convention.

5. On 2 June 2009 the Court decided to give notice of the application to the Government and give it priority treatment (Rule 41 of the Rules of Court). It also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Thirteen of the applicants live in the municipality of Somma Vesuviana, in Campania (Italy). The other five work there.

7. From 11 February 1994 to 31 December 2009 a state of emergency (*stato di emergenza*) was in place in the Campania region, by decision of the then Prime Minister, because of serious problems of solid urban waste disposal.

8. From 11 February 1994 to 23 May 2008 the management of the state of emergency was entrusted to "deputy commissioners" appointed by the Prime Minister and assisted by assistant commissioners. Nine high officials – including four presidents of the region of Campania and the head of the civil emergency planning department of the Prime Minister's Office – were appointed deputy commissioners.

9. From 23 May 2008 to 31 December 2009 the management of the state of emergency was entrusted to an under-secretariat in the Prime Minister's Office under the head of the civil emergency planning department.

A. Waste management in Campania and in the municipality of Somma Vesuviana until 2004

10. Regional Law no. 10 of 10 February 1993 ("Law no. 10/93") laid down guidelines for the adoption of a waste disposal plan in Campania which was to treat urban solid waste and recyclable materials and halve the number and capacity of landfill sites – with the help of compacting and sorting techniques – between 1993 and 1995.

11. On 9 June 1997 the President of the Region, having been appointed deputy commissioner, drew up a regional waste disposal plan. Among other things, it provided for the construction of five incinerators – four of which would be built on land in the municipalities of Marcianise, Battipaglia, Giugliano and Nola-Marigliano (the last two of these were to serve the municipalities where the applicants lived), and the fifth on a site to be determined at a later date – and also five main landfill sites and six secondary sites.

12. On 12 June 1998 the President of the Region, acting as deputy commissioner, issued a call for tenders for a ten-year concession to operate the waste collection and disposal service in the province of Naples. According to the specifications, the successful bidder would be required to ensure the proper reception of the collected waste, its sorting, conversion into refuse-derived fuel (*combustibile derivato da rifiuti* – "RDF") and incineration. To that end, it was to construct and manage three waste sorting

and RDF production facilities and set up an electric power plant fuelled by RDF, by 31 December 2000.

13. When the tendering process ended on 20 March 2000, the concession was awarded to a consortium of five companies: Fisia Impianti S.p.A. (main contractor), Impregilo S.p.A., Babcock Kommunal GmbH, Deutsche Babcock Anlagen GmbH and Evo Oberhausen AG (subcontractors).

14. Under the terms of a service concession agreement signed on 7 June 2000, the five successful companies undertook to build two RDF production centres in Caivano and Tufino in 300 days, starting on 10 and 14 April 2000 respectively, and another in Giugliano in 270 days, starting from 30 March 2000. The RDF-fuelled power plant to be built in Acerra was to be built in 24 months, starting from a date to be determined later.

15. In the meantime, on 22 April 1999 the deputy commissioner had issued a call for tenders for the waste disposal service concession in Campania. The concession was awarded to FIBE S.p.A. a consortium of companies formed specially for the purpose. On an unspecified date they formed a company called FIBE Campania S.p.A.

16. Under the concession agreement signed on 5 September 2001, FIBE S.p.A. was to build and manage seven RDF production centres and two electric power plants fuelled by RDF. It was also required to ensure the proper reception, sorting and treatment of the waste collected in the region and transform 32% of it into RDF and 33% into compost, and produce 14% of non-recyclable waste and 3% of ferrous waste.

17. In January 2001 the closure of the Tufino landfill site resulted in the temporary suspension of waste disposal services in the province of Naples. To help control the situation the mayors of the other municipalities in the province authorised the storage of the waste in their respective landfill sites on a temporary basis, under section 13 of Legislative Decree no. 22 of 5 February 1997 ...

18. From the end of 2001 to May 2003 seven RDF production centres were built, in Caivano, Pianodardine, Santa Maria Capua Vetere, Giugliano, Casalduni, Tufino and Battipaglia.

19. On 22 May 2001 the urban waste collection and transport service of the municipality of Somma Vesuviana was entrusted to a consortium of two companies: C.I.C.-Clin Industrie Città S.p.A. and Ecologia Bruscino S.r.l. On 26 October 2004 the management of the service was handed over to M.I.T.A. S.p.A., a publicly-owned company.

B. The criminal investigation into the situation of the waste disposal service following the signature of the concession contracts of 7 June 2000 and 5 September 2001

20. In 2003 the Naples Public Prosecutor's Office opened a criminal investigation (RGNR no. 15940/03) into the management of the waste disposal service in Campania since the signature of the concession contracts on 7 June 2000 and 5 September 2001.

21. On 31 July 2007 the public prosecutor's office requested the committal for trial of the administrators and certain employees of Fisia Italimpianti S.p.A., FIBE S.p.A., FIBE Campania S.p.A., Impregilo S.p.A. and Gestione Napoli S.p.A. ("the companies"), as well as the deputy commissioner in post from 2000 to 2004 and several officials from his office, on charges of fraud, failure to perform public contracts, deception, interruption of a public service or utility, abuse of office, misrepresentation of the facts in the performance of public duties and conducting unauthorised waste management operations, committed between 2001 and 2005.

22. The members of the companies concerned were accused, *inter alia*, of having, with the complicity of the deputy commissioner and of officials from his office, failed in their contractual duty to receive and process the region's waste. The companies themselves were accused of having delayed and in some cases interrupted the regular reception of the waste collected in the RDF production centres, causing refuse to pile up in the streets and the temporary storage sites provided by the mayors or the deputy commissioner.

23. The public prosecutor's office also accused the companies of having (1) produced RDF and compost by means not provided for in their contracts; (2) failed to carry out the requisite RDF energy recovery operations pending the construction of the RDF power station; (3) sub-contracted the transportation of the processed waste produced by the RDF production centres, in breach of the terms of the concession contract; and (4) stocked pollutants from the production of RDF on illegal sites with no effort to protect the environment.

24. The public officials concerned by the committal request were accused of having falsely attested that the companies in question had complied with the laws and contractual provisions governing waste disposal, authorised the opening of non-regulation waste disposal sites, the temporary storage of the RDF pending the opening of the power stations, and the dumping of pollutants produced by RDF production plants, and authorised derogations from the contractual specifications governing RDF production.

25. On 29 February 2008 the preliminary investigation judge ordered the accused to be committed for trial and scheduled the hearing before the Naples Court to be held on 14 May 2008.

C. Waste disposal management in Campania and the municipality of Somma Vesuviana from 2005 to 2007

26. Legislative Decree no. 245 of 30 November 2005, which subsequently became Law no. 21 of 27 January 2006, provided for the termination of the contracts governing waste disposal in Campania signed by the deputy commissioner in 2000 and 2001, and for the urgent organisation of a new call for tenders. In order to guarantee continuity of service, the companies already under contract were required to continue their activities until the new call for tenders was over, but only until 31 December 2007.

27. An initial call for tenders, issued on 27 March 2006 by the deputy commissioner then in post, failed for lack of sufficient valid tenders.

28. On 2 August 2006 the deputy commissioner issued a new call for tenders for a twenty-year concession.

29. Legislative Decree no. 263 of 9 October 2006, which subsequently became Law no. 290 of 6 December 2006, appointed the head of the civil emergency planning department to the post of deputy commissioner in charge of the waste disposal crisis in Campania. When the second call for tenders was annulled the deputy commissioner was instructed to sign new contractors to handle waste disposal.

30. On 28 March 2007 the regional authorities passed Law no. 4, providing for the creation of a regional division of the waste disposal scheme, a regional waste disposal observatory, a fully comprehensive regional waste management plan, a regional plan for special waste management, including dangerous waste, and a regional plan to clean up polluted sites.

31. On 6 July 2007 the Prefect of Naples was appointed deputy commissioner in charge of the waste disposal crisis.

32. Legislative Decree no. 61 of 11 May 2007, which subsequently became Law no. 87 of 5 July 2007, authorised the creation, in the municipalities of Serre (Salerno), Savignano Irpino (Avellino), Terzigno (Naples) and Sant'Arcangelo Trimonte (Benevento), of landfill sites with a special derogation from the statutory environmental protection and health and safety standards, and prohibited the creation of new waste disposal sites, in particular in the municipalities of Giugliano in Campania, Villaricca, Qualiano and Quarto (Naples), at least until the region had been cleaned up. The law made the deputy commissioner responsible for rapidly identifying new companies to collect and dispose of waste.

33. On 21 November 2007 a third call for tenders was issued. It failed because not enough tenders were received.

34. On 28 December 2007 the deputy commissioner drew up a regional plan for urban waste in Campania, in keeping with section 9 of Legislative Decree no. 61/07. It comprised a crisis resolution strategy based *inter alia*

on the development of selective waste collection, transparency in the life cycle of waste, the rationalisation and upgrading of the existing structures – in particular at least one of the RDF production centres –, the creation of structures for producing compost, and the use of new technologies and methods for the biological treatment of waste.

35. On 19 April 2008 the publicly-owned company Pomigliano Ambiente S.p.A. was put in charge of collecting and transporting organic waste in the municipality of Somma Vesuviana.

D. Waste management in Campania and the municipality of Somma Vesuviana from 2008 to 2010

36. A new crisis situation developed at the end of 2007. Tons of waste were left to pile up for weeks in the streets of Naples and other towns in the province, including those where the applicants lived (see list appended).

37. On 11 January 2008, by order no. 3639/08, the Prime Minister appointed a senior police officer deputy commissioner. His task was to open the landfill sites provided for in Legislative Decree no. 61/07 and to locate new waste storage and disposal sites, with the assistance of the police and the army. The order also invited the municipalities in the region to prepare plans for the selective collection of waste.

38. Legislative Decree no. 90 of 23 May 2008, which subsequently became Law no. 123 of 14 July 2008 (on "Extraordinary measures in response to the waste disposal crisis in Campania and subsequent civil protection measures") – appointed the head of the civil emergency planning department to the post of undersecretary of State to the Prime Minister's Office and made him responsible for managing the crisis until 31 December 2009, in place of the deputy commissioner. The undersecretary was authorised to open ten new landfill sites in the region, including two in Terzigno and Chiaiano, with a special derogation from the statutory environmental protection and health and safety standards.

39. Legislative Decree no. 90/08 also authorised the treatment of certain categories of waste at the RDF-fuelled power plant in Acerra – against the opinion submitted on 9 February 2005 by the environmental impact assessment committee – and the construction of RDF-fuelled power plants in Santa Maria La Fossa (Caserta) and in Naples and Salerno.

40. The Legislative Decree handed over ownership of the waste sorting and treatment sites to the provinces of Campania but provisionally left it to the army to manage the sites.

41. Paragraphs 4 and 7 of section 2 of the decree classified the sites, the zones, the plants and the headquarters of the waste management services "strategic national interest zones" placed under the supervision of the police and the army. The armed forces were asked to help organise the implantation of the sites and the collection and transport of waste.

42. Section 2, paragraph 9, classified preventing, obstructing or hindering waste disposal as the punishable offence of interruption of a public service.

43. Lastly, the Legislative Decree instructed the undersecretary of State to ensure that the municipalities complied with the objectives for the selective collection of urban waste laid down in the 28 December 2007 regional plan for urban waste in Campania.

44. Legislative Decree no. 172 of 6 November 2008, which subsequently became Law no. 210 of 30 December 2008 (on "Extraordinary measures in response to the waste disposal crisis in Campania and urgent environmental protection provisions") provided for the possibility, in the territories affected by the state of emergency regarding waste disposal, of mayors, provincial presidents, municipal or provincial councillors and municipal or provincial commission members being dismissed by decree of the Minister of the Interior in the event of serious neglect, *inter alia*, in their duty to plan and organise the collection, transport, processing, elimination and selective sorting of waste. It also provided, in the same territories, for special criminal sanctions to punish, *inter alia*, (1) the illegal dumping or burning of waste; (2) the unauthorised collection, transport, processing, elimination and sale of waste; (3) the creation and management of illegal landfill sites and the mixing of dangerous and non-dangerous waste.

45. According to the information submitted by the Government, which the applicants did not dispute, two landfill sites had already been opened in Savignano Irpino and Sant'Arcangelo Trimonte at the end of October 2009, others were on the point of opening in Chiaiano, Terzigno and San Tammaro, and preliminary work was under way with a view to opening a site at Andretta (Avellino). The finishing touches were being put to the RDF-fuelled power plant in Acerra, a call for tenders for the construction of an RDF-fuelled power plant in Salerno had been issued and a site for an RDF-fuelled power plant in the province of Naples had been chosen. From 14 January to 1 March 2008 269,000 tonnes of waste were removed from the streets of the region's towns and 79,000 tonnes of RDF were stored. Five hundred and thirty municipalities introduced the selective collection of waste in compliance with order no. 3639/08.

46. On 3 June 2008, pursuant to order no. 3804/09 issued by the Prime Minister and following the approval of a selective waste collection programme, a call for tenders for the waste collection service in the municipality of Somma Vesuviana was won by L'Igiene Urbana S.r.l.

47. On 15 March 2009, by order no. 3746, the Prime Minister urged the provinces of the region to set up semi-public companies to run the waste storage sites, landfills and waste disposal, processing and recycling plants.

E. The criminal investigation into the management of the waste disposal service after December 2005

48. In 2006, on an unspecified date, the Naples Public Prosecutor's Office opened a criminal investigation (RGNR no. 40246/06) into the waste disposal operations organised on a temporary basis by FIBE S.p.A. and FIBE Campania S.p.A. during the transition period following the termination of the concession contracts.

49. On 22 May 2008, at the request of the prosecutor's office, the preliminary investigation judge at the Naples Court placed compulsory residence orders on the managing directors of FIBE S.p.A. and FIBE Campania S.p.A., several of the companies' executives and employees, the people in charge of the waste sorting centres run by Fisia Italimpianti S.p.A., the manager of the Villaricca landfill, representatives of the FS Cargo S.p.A. transport company and several officials from the deputy commissioner's office.

50. The accused were charged, *inter alia*, with conspiring in the illegal trafficking of waste, forgery of official documents, deception, misrepresentation of the facts in the performance of public duties, and organised trafficking of waste.

51. On an unspecified date in 2008 the Naples Public Prosecutor's Office opened a criminal investigation (RGNR no. 32722/08, nicknamed "*Rompiballe*") into the waste disposal operations carried out after December 2005. According to the information supplied by the Government, which the applicants did not dispute, the investigation, which was still pending on 26 October 2009, concerned a number of offences against the environment and the public authorities and targeted several employees of FIBE S.p.A. and other companies in the consortium, as well as officials from the deputy commissioner's office.

F. The judgments of the Court of Justice of the European Union

52. On 22 March 2005 the Commission of the European Communities ("the Commission") brought an action for non-compliance against Italy before the Court of Justice under Article 226 of the Treaty establishing the European Community ("TEC") (case no. C-135/05). Criticising the existence of a large number of illegal and unsupervised landfill sites in Italy, the Commission alleged that the Italian authorities had failed to honour their obligations under Articles 4, 8 and 9 of Directive 75/442/EEC on waste, Article 2 § 1 of Directive 91/689/EEC on hazardous waste and Article 14, letters (a) to (c), of Directive 1999/31/EC on the landfill of waste.

53. In its judgment of 26 April 2007 the Court of Justice noted "the general non-compliance of the tips [with the] provisions", observing, *inter* alia, that the Italian Government "does not dispute the existence ... in Italy

of at least 700 illegal tips containing hazardous waste, which are therefore not subject to any control measures".

54. It concluded that the Italian Republic had failed to fulfil its obligations under the provisions cited by the Commission, because it had failed to adopt all the necessary measures to ensure that waste was recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and to prohibit the abandonment, dumping or uncontrolled disposal of waste.

55. On 3 July 2008 the Commission brought a new action for non-compliance against Italy under Article 226 TEC (case no. C-297/08).

56. In a judgment of 4 March 2010 the Court of Justice, while noting the measures taken by Italy in 2008 to tackle the "waste crisis", referred to the existence of a "structural deficit in terms of the installations necessary for the disposal of the urban waste produced in Campania, as evidenced by the considerable quantities of waste which [had] accumulated along the public roads in the region".

It held that Italy had "failed to meet its obligation to establish an integrated and adequate network of disposal installations enabling it ... to [ensure the] disposal of its own waste and, in consequence, [had] failed to fulfil its obligations under Article 5 of Directive 2006/12". According to the Court of Justice, that failure could not be justified by such circumstances as the opposition of the local population to waste disposal sites, the presence of criminal activity in the region or the non-performance of contractual obligations by the undertakings entrusted with the construction of certain waste disposal infrastructures. It explained that this last factor could not be considered *force majeure*, because "the notion of *force majeure* require[d] the non-performance of the act in question to be attributable to circumstances, beyond the control of the party claiming *force majeure*, which [were] abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence", and that a diligent authority should have taken the necessary precautions either to guard against the contractual non-performance in question or to ensure that, despite those shortcomings, actual construction of the infrastructures necessary for waste disposal would be completed on time. The Court of Justice also noted that "the Italian Republic [did] not dispute that the waste littering the public roads totalled 55,000 tonnes, adding to the 110,000 tonnes to 120,000 tonnes of waste awaiting treatment at municipal storage sites". Concerning the environmental hazard, the Court of Justice reiterated that the accumulation of waste, regard being had in particular to the limited capacity of each region or locality for waste reception, constituted a danger to the environment. It concluded that the accumulation of such large quantities of waste along public roads and in temporary storage areas had given rise to a "risk to water, air or soil, and to plants or animals" within the meaning of Article 4(1)(a) of Directive 2006/12, had caused "a nuisance

through noise or odours" within the meaning of Article 4(1)(b), and was likely to affect "adversely ... the countryside or places of special interest" within the meaning of Article 4(1)(c) of that Directive. As to the danger to human health, the Court of Justice noted that "that the worrying situation of accumulation of waste along the public roads [had] exposed the health of the local inhabitants to certain danger, in breach of Article 4(1) of Directive 2006/12".

...

B. Relevant domestic law and practice regarding compensation for poor management of waste disposal services

68. Section 4 of Legislative Decree no. 90 of 24 May 2008 empowers the administrative courts to determine disputes concerning waste disposal activities in general, including when they are carried out by public authorities or the like. The powers of the administrative courts extend to disputes over rights protected by the Constitution.

69. In a claim for damages brought by a group of residents on 5 May 2008 – prior to the entry into force of section 4 of Legislative Decree no. 90/08 – against the city of Naples and the company responsible for waste disposal there, the Naples Civil Court noted that only the administrative court could examine the case and adopt any urgent interim measure within the meaning of section 21 of Law no. 1034 of 6 December 1971 (instituting the regional administrative courts).

70. By two judgments delivered on 21 May and 23 November 2009, the Court of Cassation, sitting as a full court, held that the administrative court had jurisdiction to examine claims for compensation brought by the residents of a municipality against the authorities responsible for the collection, treatment and elimination of waste.

C. European Union law

71. Article 4 of Directive 75/442/EEC of the Council of the European Union, of 15 July 1975, on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, reads as follows:

> "Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:
>
> — without risk to water, air, soil and plants and animals,
>
> — without causing a nuisance through noise or odours,
>
> — without adversely affecting the countryside or places of special interest.
>
> Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste."

72. The relevant provision of Article 2 of Council Directive 91/689/EEC on hazardous waste, of 12 December 1991, reads as follows:

"1. Member States shall take the necessary measures to require that on every site where tipping (discharge) of hazardous waste takes place the waste is recorded and identified.

..."

73. Council Directive 1999/31/EC on the landfill of waste, of 26 April 1999, contains the following provisions:

Article 14 – Existing landfill sites

Member States shall take measures in order that landfills which have been granted a permit, or which are already in operation at the time of transposition of this Directive, may not continue to operate unless ... :

(a) with a period of one year after the date laid down in Article 18(1) [that is, at the latest, by 16 July 2002], the operator of a landfill shall prepare and present to the competent authorities, for their approval, a conditioning plan for the site including the particulars listed in Article 8 and any corrective measures which the operator considers will be needed in order to comply with the requirements of this Directive ...;

(b) following the presentation of the conditioning plan, the competent authorities shall take a definite decision on whether operations may continue on the basis of the said conditioning plan and this Directive. Member States shall take the necessary measures to close down as soon as possible ... sites which have not been granted ... a permit to continue to operate;

(c) on the basis of the approved site-conditioning plan, the competent authority shall authorise the necessary work and shall lay down a transitional period for the completion of the plan. ..."

Article 18 – Transposition

"1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than two years after its entry into force [that is, by 16 July 2001]. They shall forthwith inform the Commission thereof.

..."

74. The relevant provisions of Directive 2006/12/CE of the European Parliament and of the Council of 5 April 2006 on waste read as follows:

Article 4

"1. Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

(a) without risk to water, air or soil, or to plants or animals;

(b) without causing a nuisance through noise or odours;

(c) without adversely affecting the countryside or places of special interest.

2. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.

Article 5

1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

2. The network referred to in paragraph 1 must enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health."

75. By virtue of the precautionary principle enshrined in Article 174 of the Treaty establishing the European Community, the lack of certainty regarding the available scientific and technical data cannot justify States delaying the adoption of effective and proportionate measures to prevent a risk of serious and irreversible damage to the environment. The Community's case-law has applied this principle mainly in cases concerning health, whereas the Treaty refers to the principle only in connection with the Community's environmental policy. According to the case-law of the Court of Justice of the European Communities ("ECJ"), "where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent" (ECJ, 5 May 1998, *United Kingdom/Commission*, case C-180/96, ECR I-2265, and ECJ, 5 May 1998, *National Farmers' Union*, C-157/96, ECR I-2211).

...

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

94. Relying on Articles 2 and 8 of the Convention, the applicants submitted that in failing to take the requisite measures to guarantee the proper functioning of the public waste disposal service and in applying an inadequate legislative and administrative policy the State had caused serious damage to the environment in their region and endangered their lives and their health and that of the local population in general. They further

maintained that the public authorities had neglected to inform the people concerned of the risks of living in a polluted area.

95. The Government disagreed.

96. Since it is master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I), the Court considers, regard being had to its case-law in the matter (see *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303-C; *Guerra and Others*, cited above, § 57; *Moreno. Gómez v. Spain*, no. 4143/02, 16 November 2004; and *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII), that the applicants' complaints should be examined from the standpoint of the right to respect for one's private life and one's home enshrined in Article 8 of the Convention, the relevant provisions of which read as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

97. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. The merits

1. The parties' submissions

a) The Government

98. The Government acknowledged that "the almost disastrous management of the collection, treatment and disposal of the waste produced in certain parts of the province of Naples" had led to the accumulation of refuse in the streets of certain towns and cities and to the appearance of illegal dumping sites. However, they submitted that the acute phase of the crisis had lasted only about five months, from the end of 2007 to May 2008, and that in any event Somma Vesuviana had not been affected.

99. They further submitted that the difficulties encountered in Campania were attributable to *force majeure* factors such as the presence of organised crime in the region, failure by the waste disposal contractors to fulfil their obligations under the concession contracts, the lack of companies capable of

guaranteeing continuity of service and the opposition of the population to the creation of landfills and RDF production sites. They also explained that the fires in the streets had been lit by local people to burn the waste, and therefore the State could not be held responsible.

100. In any event, in the Government's submission the Italian authorities had fulfilled their duty of care and taken adequate measures in response to the "crisis". On the one hand they had brought criminal proceedings against those responsible for the poor management of the situation. And on the other they had allegedly taken appropriate legislative measures, including Legislative Decree no. 90/08, which they claim had put in place an effective system which had resulted in the collection of the waste, the elimination of illegal landfills and the recommissioning of the waste treatment and disposal plants (see paragraph 68 above).

101. The Government further submitted that they had also carried out several studies on the causes and effects of the "waste crisis" in Campania and given the population information enabling them to assess their degree of exposure to the risks associated with waste collection, treatment and disposal. The causes of the waste crisis in Campania had been analysed by three parliamentary commissions, whose conclusions had been published in reports. The Ministry of Health and the civil emergency planning department had allegedly commissioned various studies to determine the impact of the crisis on the environment and human health ... According to the Government these studies had revealed that the "waste crisis" had had no significant impact on the environment – except for a momentary peak in water pollution levels not directly linked to the presence of waste – and no negative effects on human health. The results had been made public at public seminars and conferences. Lastly, the Government submitted, a documentation centre on health and the environmental pollution caused by the waste, managed by the National Disease Prevention and Control Centre and the Campania Region, was being set up.

b) The applicants

102. The applicants submitted that the failings of the authorities in the management of the crisis had caused damage to the environment and put their lives in danger.

103. They argued that the respondent State had also failed in its obligation to provide information enabling the people concerned to assess their degree of exposure to the risks associated with waste collection and disposal because they had not made public the findings of the study commissioned by the civil emergency planning department ... Furthermore, the Italian Health Institute study, presented at the prefecture in Naples in January 2009 ..., had allegedly revealed a link between tumour levels and the presence of landfills in the area comprising the municipalities of Acerra, Nola and Marigliano (bordering on Somma Vesuviana).

2. The Court's assessment

a) General principles

104. The Court reiterates that severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely (see *López Ostra*, cited above, § 51, and *Guerra and Others*, cited above, § 60).

105. It further points out that Article 8 does not merely compel the State to abstain from arbitrary interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life. In any event, whether the question is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8 or in terms of an "interference by a public authority" to be justified in accordance with paragraph 2, the applicable principles are broadly similar (see *López Ostra,* cited above, § 51, and *Guerra and Others*, cited above, § 58).

106. In the context of dangerous activities in particular, States have an obligation to set in place regulations geared to the special features of the activity in question, particularly with regard to the level of risk potentially involved. They must govern the licensing, setting-up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks (see, *mutatis mutandis*, *Oneryildiz v. Turkey*, [GC], no. 48939/99, § 90, ECHR 2004-XII).

107. As to the procedural obligations under Article 8, the Court reiterates that it attaches particular importance to public access to information that enables them to assess the risks to which they are exposed (see *Guerra and Others*, cited above, § 60; *Taşkin and Others v. Turkey* no. 46117/99, § 119, ECHR 2004-X; *Giacomelli v. Italy*, no. 59909/00, § 83, ECHR 2006-XII; and *Tătar v. Romania*, no. 67021/01, § 113, ECHR 2009-... (extracts)). It further reiterates that Article 5 § 1 (c) of the Aarhus Convention, which Italy has ratified, requires each Party to ensure that "in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected". ...

b) Application of the above principles to the instant case

108. The Court has already noted ... that the municipality of Somma Vesuviana, where the applicants live or work, was affected by the "waste

crisis". It notes that a state of emergency was declared in Campania from 11 February 1994 to 31 December 2009 and that the applicants were forced to live in an environment polluted by refuse left in the streets at least from the end of 2007 until May 2008. The Court considers that this situation may have led to a deterioration of the applicants' quality of life and, in particular, adversely affected their right to respect for their homes and their family life. Article 8 therefore applies in the present case. The Court further notes that the applicants have not alleged that they were affected by any pathologies linked to exposure to waste, and that the scientific studies submitted by the parties reach opposite conclusions as to the existence of a causal link between exposure to the waste and an increased risk of developing pathologies such as cancer or congenital malformations. In these conditions, although the Court of Justice of the European Union, when examining the waste disposal situation in Campania, considered that the accumulation of large quantities of refuse along public roads and in temporary storage areas exposed the health of the local inhabitants to certain danger (see judgment C-297/08, cited in paragraphs 55 and 56 above), the Court cannot conclude that the applicants' lives or health were threatened. That said, however, Article 8 may be relied on even in the absence of any evidence of a serious danger to people's health (see *López Ostra*, cited above, § 51).

109. The Court considers that the present case does not concern direct interference with the applicants' right to respect for their homes and their private life brought about by the action of the public authorities, but rather the alleged failure of the authorities to take adequate steps to ensure the proper functioning of the waste collection, treatment and disposal service in the municipality of Somma Vesuviana. It accordingly considers it appropriate to examine the case from the standpoint of the State's positive obligations under Article 8 of the Convention (see *Guerra and Others*, cited above, § 58).

110. The collection, treatment and disposal of waste are without a doubt dangerous activities (see, *mutatis mutandis*, *Oneryildiz*, cited above, § 71). That being so, the State was under a positive obligation to take reasonable and adequate steps to protect the right of the people concerned to respect for their homes and their private life and, more generally, to live in a safe and healthy environment (see *Tătar*, cited above, § 107). Regard must also be had to the margin of appreciation the States enjoy in the choice of the concrete means they use to fulfil their positive obligations under Article 8 of the Convention (see *Fadeyeva v. Russia*, no. 55723/00, § 96, ECHR 2005-IV).

In the present case, from 2000 to 2008 the waste treatment and disposal service was entrusted to private companies, while the waste collection service in the municipality of Somma Vesuviana was provided by several publicly owned companies. The fact that the Italian authorities handed over the management of a public service to third parties does not relieve them of

the duty of care incumbent on them under Article 8 of the Convention (see *López Ostra*, cited above, §§ 44-58).

111. The Court notes that from May 2008 the Italian State took various measures and initiatives to overcome the difficulties in Campania, and that the state of emergency declared there on 11 February 1994 was lifted on 31 December 2009. The respondent Government acknowledged the existence of a crisis situation, it is true, but it classified that situation as *force majeure*. In this connection the Court will simply reiterate the terms of Article 23 of the Articles of the United Nations International Law Commission on State responsibility for internationally wrongful acts, according to which "*force majeure* is "an irresistible force or ... an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform [an international] obligation". ... Regard also being had to the conclusions of the Court of Justice of the European Union in case no. C-297/08, cited above, the Court considers that the circumstances relied on by the Italian State cannot be considered as *force majeure*.

112. In the Court's opinion, even assuming, as the Government have affirmed, that the acute phase of the crisis lasted only five months – from the end of 2007 to May 2008 – and in spite of the margin of appreciation left to the respondent State, there is no denying that the protracted inability of the Italian authorities to ensure the proper functioning of the waste collection, treatment and disposal service adversely affected the applicants' right to respect for their homes and their private life, in violation of Article 8 of the Convention in its substantive aspect.

113. However, as to the procedural aspect of Article 8 and the complaint concerning the alleged failure to provide information that would have enabled the applicants to assess the risk they ran, the Court points out that the studies commissioned by the civil emergency planning department were made public in 2005 and 2008. It accordingly considers that the Italian authorities discharged their duty to inform the people concerned, including the applicants, of the potential risks to which they exposed themselves by continuing to live in Campania. There has therefore been no violation of Article 8 of the Convention in this regard.

...

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

120. The applicants each claimed 15,000 euros (EUR) for the non-pecuniary damage allegedly sustained.

121. The Government objected, arguing that the claim only concerned Mr Errico di Lorenzo, the lawyer acting before the Court on his own behalf.

122. The Court notes that Mr di Lorenzo claimed compensation for non-pecuniary damage not only for himself but for "each applicant", so it considers that the claim for compensation covers all the applicants. In the circumstances of the present case, however, the Court considers that the violations of the Convention it has found constitute sufficient just satisfaction for any non-pecuniary damage.

...

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the complaints under Articles 8 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 8 of the Convention in its substantive aspect;

3. *Holds*, unanimously, that there has been no violation of Article 8 of the Convention in its procedural aspect;

4. *Holds*, by six votes to one, that there has been a violation of Article 13 of the Convention;

...

Done in French, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Françoise Tulkens
Registrar	President

...